

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

05-CR-6161L

v.

JOHN NICOLO, et al.,

Defendants.

EASTMAN KODAK COMPANY,

Plaintiff,

v.

05-CV-6384L

JOHN NICOLO, et al.,

Defendants.

By order entered April 11, 2007, I scheduled argument on several motions before me and Magistrate Judges Jonathan W. Feldman and Marian W. Payson. The Court scheduled argument on the motion to change venue in the criminal case and the motion to stay the civil action pending resolution of the criminal case. The balance of defendant Nicolo's omnibus motions were scheduled before Magistrate Judge Feldman later the same day and plaintiff's motion to compel in the civil action was scheduled later that day as well, before Magistrate Judge Payson.

By letter dated May 1, 2007, counsel for defendant John Nicolo seeks to adjourn all motions at least until June 6, 2007. The Government has filed no opposition to the motion. Counsel for plaintiff, Eastman Kodak, does object to an adjournment.

The basis for the adjournment is twofold. First, a conflict issue has arisen now that Constance Roeder has been added as a defendant in the criminal case. At this point, counsel for Nicolo seeks to also represent defendant Roeder. The matter has been discussed on several occasions before Magistrate Judge Feldman and Ms. Roeder was directed to obtain conflict counsel.

The matter is scheduled for a *Curico* hearing before Magistrate Judge Feldman on June 6. In his letter of May 1, 2007, counsel for Nicolo suggests that until the conflict matters are resolved, argument on any motions is premature.

The second reason for the requested adjournment is the fact that there has been a change of counsel for co-defendant Charles Schwab. Schwab's new counsel has just entered the case and has been given until May 24, 2007 to review discovery and advise the Court as to the time needed to file motions.


After reviewing the submissions, I believe an adjournment of the motions from Friday May 4, 2007 is warranted. Although this Court and the Magistrate Judges are certainly prepared to hear

the pending motions, it does seem appropriate in light of the conflict issue and the new lawyer for co-defendant Schwab to delay argument on the pending motions for a time.

It is important that the conflict issue be resolved promptly and the parties should be prepared to deal with and conclude that matter on June 6, 2007. There will be no adjournments, absent extraordinary cause.

The attorneys for the parties are directed to appear before this Court after their appearance before Magistrate Judge Feldman on June 6, 2007, to schedule the outstanding motions. By then the conflict issue should be resolved and the Court should have a good estimation from Schwab's new counsel concerning motions on his behalf. Thereafter, after the *Curcio* matter is resolved, the Court, as well as Magistrate Judges Feldman and Payson, will discuss with counsel, on June 6, 2007, the rescheduling of the pending motions.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
May 2, 2007.